SINGLE BENCH

cf 2002 — (B) (E)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

WRIT PETITION (C) NO. 258 /2007

PETITIONERS

1. M/s. Kanker Roadways (Partnership Firm) through Partner Shri Pritam Singh Garcha, S/o Jogender Sing Garcha Aged about 53 years, R/o. Civil Lines, Raipur (C.G.)

2. Rafik Ahmad Siddhique, S/o. Late Shri M.Bari, Aged about 40 years, R/o. Rajatalab Raipur (C.G.).

P.F. No. 1160/07
Presented by Shri A.M. Tiwari
dated 9/2/07

VERSUS

RESPONDENTS

1. State Transport Appellate Tribunal, State of Chhattisgarh, Raipur

2. Regional Transport Authority, Chhattisgarh, Raipur.

3. The Secretary, R.T.A. Jagdalpur (C.G.)

4. Manish Travels, New Bus Stand, Durg (C.G.).

5. M/s. Payal Travels, Transport Operator, R/o. Bus Stand Durg (C.G.).

OATH COMMISSIONER APARNA MALVIYA Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(31)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (C.) NO.258 OF 2007

Petitioners	:	M/s Kanker Roadways (Partnership Firm) and another
	versus	
Respondents	:	State Transport Appellate Tribunal and others

Present : Mr. B.K.Rawat, counsel for the petitioners.
Mr. Utkarsh Verma, Deputy Government Advocate for the State/ respondents No.2 and 3.
None appears for other respondents.

ORDER

(Passed on 20th Day of February, 2007)

By this petition, the petitioners challenge the validity of the order dated 5-1-2007 (P-3) (P-4) passed by the Regional Transport Authority and orders dated 31-1-2007 (P-7) (P-8) passed by the State Transport Appellate Tribunal at Raipur.

2. The facts, in nutshell, are that the petitioners are operating and plying stage carriages. The petitioners have applied for grant of temporary permit for plying Bus on the route from Raipur to Bailadila via Abhanpur, Dhamtari, Charama, Kanker, Kondagaon, Bastar, Jagdalpur, Geedam, Dantewada, Bacheli and back. The petitioners applied for temporary permit on the same route for the same

timing. The timing is 20.35 departure from Raipur, 7.20 arrival at Bailadila, 19.20 departure from Bailadila and 5.50 arrival at Raipur for a period from 1-1-2007 to 30-4-2007 (P-1) (P-2).

3. The Regional Transport Authority – respondent No.2, after having considered objections raised by other transporters, rejected the applications of the petitioners by order dated 5-1-2007 (P-3) (P-4) on the ground that the petitioners have sought for timing just 10 minutes before other stage carriage permit holders. In view of the distance of the route, i.e., about 439 kilometers, this may create undue prejudice to other permit holders, who are plying their Buses on the same route having departure from Raipur at 20.45 and departure from Bailadila at 19.30. The petitioners have sought for temporary permit for the timing just 10 minutes before the time granted to Manish Travels and Payal Travels. The orders were passed after considering objections raised by the other transporters.

4. The petitioners, in appeal, approached the State Transport Appellate Tribunal. The Tribunal, by its orders dated 31-1-2007 (P-7) (P-8), passed in Appeal No.5/2007 and Appeal No.4/2007, confirmed the findings and decision of respondent No.2, holding as under :-

> "8. ..... प्राधिकार ने आलोच्य आदेश में यह उल्लेख किया है कि अपीलार्थी ने अस्थायी अनुज्ञा पत्र के लिए जो समयचक्र प्रस्तावित किया है, उसके ठीक 10 मिनट पूर्व आपत्तिकर्ताओं (अर्थात मध्याक्षेपीगण) की वाहन संचालित हो रही है, जिससे वाहनों के मध्य प्रतिस्पर्धा की स्थिति निर्मित होगी, जो

जनहित में उचित नहीं है और 10 मिनट पूर्व ही बस का संचालन होने के कारण अस्थायी आवश्यकता की स्थिति भी निर्मित नहीं हो रही है । ....."

5. The petitioners have preferred this petition under Article 226 of the Constitution of India challenging the validity of the orders passed by the State Transport Appellate Tribunal – respondent No.1. I have gone through the orders passed by the authorities below, pleadings and documents appended thereto. It appears that there is no perversity in the decision and the orders are passed on proper appreciation of facts and application of law. It is not a case of no evidence or a case of violation of principles of natural justice.

6. It is well settled that the power to issue a writ of certiorari under Article 226 of the Constitution or the exercise of supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act. (See ***Surya Dev Rai*** vs. ***Ram Chander Rai and others***[1]).

7. In ***Surya Dev Rai*** vs. ***Ram Chander Rai and others*** (supra), it was further held that a writ of certiorari under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction, i.e., when a Subordinate Court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure

specified, and thereby occasioning failure of justice. In the same case, Hon'ble the Supreme Court further held as under :-

> "38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :
>
> (1) xxxxx xxxxx xxxxx
>
> (2) xxxxx xxxxx xxxxx
>
> (3) xxxxx xxxxx xxxxx
>
> (4) xxxxx xxxxx xxxxx
>
> (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

8. Thus, I have not found any irregularity or gross injustice being occasioned by the orders passed by the authorities below.

9. Thus, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2003) 6 SCC 675

Gopal